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2 **UNITED STATES DISTRICT COURT**  
3 **DISTRICT OF NEVADA**

4 \* \* \*

5 LAUSTEVEION JOHNSON,

6 Plaintiff,

7 v.

8 REGINA BARRETT, *et. al*,

9 Defendants.  
10  
11

Case No. 2:17-cv-02304-RFB-BNW

**ORDER**

Motion for Immediate Transfer  
(ECF No. 87)

Motion for Preliminary Injunction and  
Request for Teleconference  
(ECF No. 88)

12 **I. INTRODUCTION**

13 Before the Court are Plaintiff's Motion for Immediate Transfer (ECF No. 87) and Motion  
14 for Preliminary Injunction and Request for Teleconference (ECF No. 88). For the following  
15 reasons, the Court denies both motions.

16 **II. PROCEDURAL BACKGROUND**

17 Plaintiff, who is currently incarcerated and under the custody of the Nevada Department of  
18 Corrections, ("NDOC") filed his complaint and application to proceed in forma pauperis on  
19 September 1, 2017. ECF No. 1. The Court screened his complaint on October 30, 2018. ECF No.  
20 4. On April 1, 2019, Defendants filed a Motion to Dismiss Plaintiff's Complaint in Part. ECF No.  
21 23. The Court ordered that Defendants' Motion to Dismiss Plaintiff's Complaint be granted in part  
22 and denied in part. ECF No. 66. On March 19, 2020, Defendants resubmitted their Motion to  
23 Dismiss as permitted by the Court. ECF No. 68. On July 6, 2020, Plaintiff submitted a Motion for  
24 Partial Summary Judgment. ECF No. 80. The Court stayed the dispositive motion deadline until  
25 after the Motion to Dismiss is ruled upon. ECF No. 85. Plaintiff filed the instant Motion for  
26 Immediate Transfer (ECF No. 87) and Motion for Preliminary Injunction (ECF No. 88), which are  
27 the same document, on November 6, 2020. Defendants responded on November 20, 2020. ECF  
28 Nos. 90, 91.

### 1           **III.     LEGAL STANDARD**

2           A preliminary injunction is “an extraordinary remedy that may only be awarded upon a  
 3 clear showing that the plaintiff is entitled to such relief.” Winter v. Natural Res. Def. Council, Inc.,  
 4 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, a plaintiff must establish four elements:  
 5 “(1) a likelihood of success on the merits, (2) that the plaintiff will likely suffer irreparable harm  
 6 in the absence of preliminary relief, (3) that the balance of equities tip in its favor, and (4) that the  
 7 public interest favors an injunction.” Wells Fargo & Co. v. ABD Ins. & Fin. Servs., Inc., 758 F.3d  
 8 1069, 1071 (9th Cir. 2014), as amended (Mar. 11, 2014) (citing Winter, 555 U.S. 7, 20 (2008)). A  
 9 preliminary injunction may issue under the “serious questions” test. Alliance for the Wild Rockies  
 10 v. Cottrell, 632 F.3d 1127, 1134 (9th Cir. 2011) (affirming the continued viability of this doctrine  
 11 post-Winter). According to this test, a plaintiff can obtain a preliminary injunction by  
 12 demonstrating “that serious questions going to the merits were raised and the balance of hardships  
 13 tips sharply in the plaintiff’s favor,” in addition to the other Winter elements. Id. at 1134-35  
 14 (citation omitted).

15           The Prison Litigation Reform Act (“PLRA”) further provides that in any civil action with  
 16 respect to prison conditions, any preliminary injunctive relief must be “narrowly drawn, extend no  
 17 further than necessary to correct the harm the court finds requires preliminary relief, and be the  
 18 least intrusive means necessary to correct that harm.” 18 U.S.C. § 3626 (a)(2).

### 19           **IV.     DISCUSSION**

20           Plaintiff requests an immediate transfer from Southern Desert Correctional Center  
 21 (“SDCC”) to Lovelock Correctional Center (“LCC”), or in the alternative, an emergency  
 22 injunction because of security and safety reasons. He also requests a teleconference on his motion  
 23 if a hearing is necessary. Plaintiff states that he is classified for LCC and was moved to SDCC  
 24 around January 20, 2020 for “Court and Return.” Plaintiff alleges that the Court set up multiple  
 25 court hearings for appearances which kept him at SDCC. He states he spoke with Katlyn Brady,  
 26 Deputy Attorney General about his intention to seek an immediate transfer to LCC, and that she  
 27 stated that she would not oppose.

28           Plaintiff says that he has been retaliated against by SDCC staff who have placed him in the

1 hole, taken his property, and prevented him from having his Islamic diet because they found out  
 2 he was scheduled to be on trial against SDCC staff. To the extent that he is alleging an injury,  
 3 Plaintiff also states that he has increased risk of contracting COVID-19 due to a sinus infection  
 4 and that he needs to be transferred to LCC to receive treatment.

5 Defendants say first that Plaintiff misrepresented their position, and that Plaintiff never  
 6 indicated that he intended to file a motion requesting an immediate transfer. Had he done so,  
 7 Defendants say they would have stated that they would oppose it. Defendants state Plaintiff  
 8 indicated he was submitting an internal request to NDOC that he be transferred back to LCC, and  
 9 Katlyn Brady, Deputy Attorney General, told him that the Nevada Attorney General (OAG) is not  
 10 involved with internal transfers conducted by the NDOC.

11 Second, Defendants assert that Plaintiff is engaging in forum shopping to attempt to obtain  
 12 a favorable ruling on motion for a transfer to LCC. On November 16, 2020, Plaintiff filed this  
 13 instant emergency motion for an immediate transfer or in the alternative, a preliminary injunction  
 14 transferring Plaintiff to LCC. ECF Nos. 87 and 88. On November 12, 2020, in Johnson v. Wills,  
 15 2:17-cv-01121-APG-EJY, Plaintiff filed a similar motion entitled “Plaintiff’s Unopposed Motion  
 16 for Immediate Transfer,” and Defendants in that matter filed an opposition with the same allegation  
 17 that Plaintiff misrepresented the context of the parties’ conversation regarding a transfer.

18 Third, Defendants assert that Plaintiff has not grieved any of his allegations regarding  
 19 inadequate medical care, staff threats, or housing while being at SDCC. Defendants also state that  
 20 NDOC suspended all internal inmate transfer for the next several weeks to better establish a  
 21 COVID-19 “firewall,” transferring Plaintiff would increase the likelihood that COVID-19 spreads  
 22 through LCC, and Plaintiff would be required to be isolated for approximately two weeks.

23 Finally, Defendants state that there is no nexus between the request for transfer to LCC and  
 24 Plaintiff’s Complaint, which are retaliation claims against several NDOC employees. ECF No. 4  
 25 at 5-8. Further, Defendants state that Plaintiff failed to meet any of the four preliminary injunction  
 26 factors.

27 **A. Motion for immediate transfer, or in the alternative, a preliminary injunction**

28 Here, the Court denies Plaintiff’s request for an immediate transfer to LCC, or in the

alternative, a preliminary injunction. Judge Gordon denied Plaintiff's motion to transfer to LCC in Johnson v. Wills, 2:17-cv-01121-APG-EJY. Similarly, this court denies Plaintiff's motion to transfer because whether and when to transfer Plaintiff in this instance is a matter for NDOC to decide.

With respect to the preliminary injunction, the court denies the motion as there is no relationship between the request to transfer and the underlying complaint. Pac. Radiation Oncology, LLC v. Queen's Med. Ctr., 810 F.3d 631, 636 (9th Cir. 2015). Plaintiff fails to address the factors needed for injunctive relief: that Plaintiff is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.

#### **B. Motion for Teleconference**

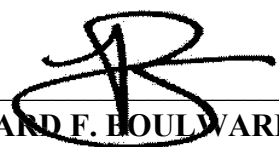
Under Local Rule 78-1, all motions may be "considered and decided without or without a hearing." However, a court may not refuse to hear oral argument if a party "would suffer unfair prejudice as a result." Mahon v. Credit Bureau of Placer Cnty. Inc., 171 F.3d 1197, 1200 (9th Cir.1999), as amended (Apr. 28, 1999).

Here, Plaintiff requested a teleconference for Plaintiff's Motion for Immediate Transfer. ECF No. 87. The Court has considered the merits of the Motion to Transfer above and finds that neither party would suffer unfair prejudice without a hearing, so Plaintiff's Motion for Teleconference is denied.

#### **V. CONCLUSION**

IT IS ORDERED that Plaintiff's Motion for Immediate Transfer (ECF No. 87) and Motion for Preliminary Injunction and Request for Teleconference (ECF No. 88) are DENIED.

DATED: March 8, 2021

  
 RICHARD F. BOULWARE, II  
 UNITED STATES DISTRICT JUDGE